



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/069,703	04/29/1998	GILLES H. TAPOLSKY	VIRO:034	3665

7590 11/12/2004

A James Nelson ESQ
Schwegman Lundberg Woessner & Kluth
1600 TCF Tower
121 South Eighth Street
Minneapolis, MN 55402

EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

04/069703

Applicant(s)

TAPOLSKY

Examiner

WGBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/25/04
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-3, 5-10, 12, 13, 15-18, 33, 34 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 10, 13, 16, 33 is/are allowed.
- ☒ Claim(s) 1-3, 5-9, 12, 15, 17-18, 34 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- *Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-6, 9, 12, 15, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takayanagi et al. in view of Ventouras.

Takayanagi et al teach a slow release medical tape for oral mucosa comprising a support layer and a medical layer composed of a water-soluble polymer (abstract). PVP, sodium polyacrylate, and carboxy methyl cellulose are specified (column 2 lines 61-64). A second swellable polymer, such as hydroxypropyl cellulose, is specified (column 3 lines 3-5). The medicament layer may be composed of two or more layers (column 3 lines 18-19). One or more water-soluble polymers are disclosed (column 2 line 68 column 3 line 2). Methylcellulose is specified (column 2 lines 65-66). Dissolution time may be varied by proper selection of polymers (column 3, lines 29-33). Anti-inflammatory steroids are disclosed (column 2 lines 48-53). A 200 um thickness is specified (column 3, lines 15-16).

It would have been obvious to one of ordinary skill to make a slow release tape comprising two layers in view of Takayanagi et al. As to the claimed hydroxyethyl cellulose, Ventouras teaches the equivalence of hydroxypropyl cellulose and hydroxyethyl cellulose as swellable polymers (column 2 lines 21-23).

Applicants argue that column 1 lines 49-50 of Ventouras recites hydroxypropyl methyl cellulose rather than hydropropyl cellulose.

Art Unit: 1617

However, column 2 lines 21-23 does recite the polymer. Applicants argue nonanalogous art, however, Ventouras et al is cited only for its teaching of equivalency of swellable polymers, which, it is argued, is relevant to any composition.

Claims 1-3, 5-9, 12, 15, 17-18, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takayanagi et al in view of Ventouras as applied to claims 1-3, 5-6, 9, 12, 15, 17-18 above, and further in view of WO 95/05416 (WO '416) and EPA 250187 (EPA '187).

Takayanagi et al in view of Ventouras is discussed above.

WO '416 teaches overlaying an adhesive layer to prevent leakage of active from edges (page 30 lines 16-24).

EPA '187 teaches an intra-oral film (Title). Flavors are disclosed as customary (page 4, lines 41-43).

It would have been obvious to one of ordinary skill to overlay an adhesive layer in Takayanagi et al to achieve the beneficial effect of preventing Leakage of active from edges in view of WO '416 and to add a flavor as a customary additive in intra-oral films in view of EPA '187.

Claims 1-3, 5-9, 12, 17-18, 34 are rejected.

Claims 10, 13, 16, 33 are allowed.

Any inquiry concerning this communication should be directed to Edward J. Webman at telephone number 571-272-0633.


EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500